

REMARKS

Claims 1-21, 24 and 25 remain pending in this application.

Applicants have amended Claims 14, 16, 17 and 20.

Claims 1-13, 18, 19 and 24-25 are allowed, for which Applicants are grateful.

Applicants acknowledge the indication that Claims 16 and 20-21 are objected to, but would be allowable if rewritten to overcome the 35 U.S.C. § 112, second paragraph rejection, for which Applicants thank the Examiner. Claims 16, 17 and 20 have thus been amended.

Upon entry hereof, Claims 1-21 and 24-25 are presented for examination.

Applicants turn now to the Action.

Section 112 Rejections

Claims 14, 16-17 and 20-21 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite, for the reasons given at page 2 of the Action.

Applicants have amended the claims in a manner to overcome the Section 112 rejections.

Applicants respectfully request reconsideration and withdrawal of the Section 112 rejections.

Sections 102/103 Rejections

Claims 14-15 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 4,767,794 ("Modic et al.") for the reasons given at pages 2-3 of the Action.

Applicants traverse the Sections 102(b)/103(a) rejections.

For the Examiner's review, Applicants provide a brief summary of the invention.

Claim 14 defines the present invention as an elastomeric foam comprising a reaction product of a two-part curable foaming composition comprising: (A) A first part comprising: (i) an alkoxy silyl capped prepolymer; and (ii) a polyhydrogen siloxane; (iii) optionally a catalyst which accelerates both foaming and cross-linking through alkoxy silyl groups on the alkoxy silyl capped prepolymer; and (B) A second part comprising: (i) a nitrogen-containing compound having an active hydrogen; (ii) water; and (iii) optionally a catalyst which accelerates both foaming and cross-linking through alkoxy silyl groups on the alkoxy silyl capped prepolymer; provided that at least one of the parts contain a catalyst and

where after mixing together the first and second parts a cured elastomeric foam is formed.

Claim 15 defines the present invention as a moisture curable foaming composition comprising an alkoxy silyl capped polymer, a polyhydrogen siloxane, a nitrogen-containing compound having an active hydrogen, and water.

Modic et al. refers to a foamable composition comprising: (a) 100 parts by weight of a vinyl-containing polysiloxane of a specified formula; (b) from 1 to 50 parts by weight of a hydride polysiloxane of a specified formula; (c) a hydroxyl source selected from water, organic alcohol, hydroxylated siloxane, and combinations thereof in an amount to provide a molar ratio of from about 0.02/1 to about 5/1 of hydroxyl radicals to silicon-bonded hydrogen atoms of component (b); (d) from about 1 to about 250 parts per million of platinum catalyst; and (e) an amount of amine compound effective to lower foam density.

Claims 14 and 15 are thus directed to an elastomeric foam and a moisture curable foaming composition, respectively.

The Examiner is in agreement that a single document must disclose each and every recitation of a claim under review in order to be an effective anticipatory reference. Failing

such precise disclosure, rejections under Section 102 are improper. Here, Modic et al. does not possess such disclosure.

Nowhere in Modic et al. is an elastomeric foam comprising the reactive product of the two part curable foaming composition as so defined disclosed, taught or suggested.

Moreover, nowhere in Modic et al. is a moisture curable foaming composition as so defined disclosed, taught or suggested.

Indeed, the Examiner acknowledges in the Action at the paragraph bridging pages 5-6 that:

No prior art of record discloses compositions that contain all four difference components claimed in those claims, i.e., 1) alkoxy silylcapped polysiloxane prepolymer; 2) a polyhydrogen siloxane; 3) a nitrogen-containing compound having an active hydrogen (primary/secondary amines) and 4) water (either in one or two-part compositions), or their uses.

Claim 15 for instance contains precisely these "four difference [sic, different] components", which the Examiner recognized are not present in the "prior art of record."

Accordingly, reconsideration and withdrawal of the Section 102 rejections are respectfully requested.

As regards the Section 103 rejection, in addition to a lack of disclosure, teaching or suggestion, Modic et al. provides no motivation to reach the invention as defined by

Claim 14 or 15, let alone does it provide a reasonable expectation of success of achieving the so defined invention.

Accordingly, reconsideration and withdrawal of the Section 103 rejections are respectfully requested.

Section 103(a) Rejection

Claim 17 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Modic et al. in combination with Applicants' own disclosure for the reasons given at page 3 of the Action.

Applicants traverse the Section 103(a) rejection, particularly the combination of Modic et al. with Applicants' own disclosure.

Claim 17 defines the invention as a composite structure comprising first and second substrates and an elastomeric foam positioned therebetween. The elastomeric foam comprises a reaction product of a composition of a composition of (A) a first part comprising: (i) an alkoxy silyl capped prepolymer; and (ii) a polyhydrogen siloxane; (iii) optionally a catalyst which accelerates both foaming and cross-linking through alkoxy silyl groups on the alkoxy silyl capped prepolymer; and (B) A second part comprising: (i) a nitrogen-containing compound having an active hydrogen; (ii) water; and (iii)

optionally a catalyst which accelerates both foaming and cross-linking through alkoxysilyl groups on the alkoxysilyl capped prepolymer; provided that at least one of the parts contains a catalyst and wherein after mixing together the first and second parts a cured elastomeric foam is formed.

Modic et al. does not disclose, teach or suggest, or motivate one of ordinary skill in the art to reach, whether alone or in combination with Applicants' own disclosure (assuming such combination is proper, which Applicants dispute), the invention as so defined by for instance Claim 17, as amended.

Moreover, no motivation exists given Modic et al. to reach for the inventive elastomeric foam as so defined in Claim 17, and given Modic et al. no reasonable expectation of success would be expected to be achieved in reaching the inventive elastomeric foam as so defined in Claim 17.

Only Applicants define the invention in this aspect as an elastomeric foam comprising the reaction product of (A) a first part comprising: (i) an alkoxysilyl capped prepolymer; and (ii) a polyhydrogen siloxane; (iii) optionally a catalyst which accelerates both foaming and cross-linking through alkoxysilyl groups on the alkoxysilyl capped prepolymer; and (B) A second part comprising: (i) a nitrogen-containing compound having an

active hydrogen; (ii) water; and (iii) optionally a catalyst which accelerates both foaming and cross-linking through alkoxy silyl groups on the alkoxy silyl capped prepolymer; provided that at least one of the parts contains a catalyst and wherein after mixing together the first and second parts a cured elastomeric foam is formed.

Based on the above, Applicants request reconsideration and withdrawal of the Section 103(a) rejections.

In view of the above, Applicants respectfully submit that the rejections have been addressed, and they should no longer be maintained. Applicants further submit that the application is in condition for allowance, and respectfully request such an indication in the next written communication.

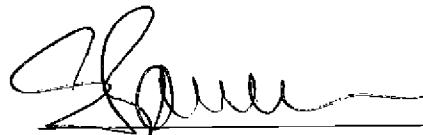
In any event, Applicants submit that this paper represents an earnest attempt at advancing prosecution on the merits, and thus respectfully submits that entry thereof is proper.

To the extent that the Examiner does not believe that the present paper places the application in condition for allowance, he is respectfully requested to contact Applicants' undersigned attorney may be reached by telephone at (860) 571-

Application No. 10/510,458
Amendment After Final Rejection dated August 26, 2009
Office Action of July 24, 2009

5001, by facsimile at (860) 571-5028 or by e-mail at
steve.bauman@us.henkel.com. All correspondence should be
directed to the address given below.

Respectfully submitted,



Steven C. Bauman
Attorney for Applicants
Registration No. 33,832

HENKEL CORPORATION
Legal Department
One Henkel Way
Rocky Hill, Connecticut 06067
Customer No. 31217